

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

A. FRANK GLEAVES, III
Marion County Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

RANDY SPANGLER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0607-CR-402
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G17-0507-FD-118504

MAY 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Randy Spangler (“Spangler”) appeals from his sentence following his guilty plea to the offenses of criminal confinement, a Class D felony, Ind. Code §35-42-3-3, and domestic battery, Class A misdemeanor. Ind. Code §35-43-2-1.5.

We affirm.

ISSUE

Spangler raises the following issue for our review: whether the trial court erred while imposing sentence by failing to set forth a statement finding aggravating and mitigating factors, and demonstrating that those factors have been assessed and weighed.

FACTS AND PROCEDURAL HISTORY

In June 2005, Spangler had an argument with K.A., with whom he had been living for several years. Spangler then left their home for several days. When Spangler returned, he saw that there was another male at their house. Spangler became angry and began fighting with K.A. and the man. Spangler punched the woman in the face twice resulting in bodily injury to the woman. When the woman attempted to leave the house, Spangler shut the door and stood in the doorway preventing the woman from leaving and calling the police. Spangler argued with the woman for approximately 30 to 45 minutes, while preventing her from exiting the house.

On May 25, 2006, the State charged Spangler with criminal confinement, residential entry, domestic battery, battery, and invasion of privacy. On June 15, 2006, Spangler pled guilty to criminal confinement, a Class D felony, and domestic battery, a Class A misdemeanor. The trial court held a sentencing hearing on June 29, 2006, at the

conclusion of which the trial court sentenced Spangler to three years for criminal confinement, and one year for the domestic battery.¹ The State dismissed the remaining counts against Spangler as well as charges pending in another action.

DISCUSSION AND DECISION

On April 25, 2005, the Indiana Legislature's amendment of sentencing statute Ind. Code §35-38-1-7.1(d) became effective. Ind. Code §35-38-1-7.1(b) provides that the trial court may consider mitigating circumstances. However, a court may impose any sentence that is authorized by statute and permissible under the Constitution of the State of Indiana, regardless of the presence or absence of aggravating circumstances or mitigating circumstances. Ind. Code §35-38-1-7.1(d). The trial court may impose any sentence within the sentencing range without regard to the presence or absence of such circumstances. *Fuller v. State*, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006). Because the new sentencing statute provides for a range with an advisory sentence rather than a fixed or presumptive sentence, a lawful sentence would be one that falls within the sentencing range for the particular offense. *Id. citing Samaniego-Hernandez v. State*, 839 N.E.2d 798, 805 (Ind. Ct. App. 2005).

Ind. Code §35-50-2-7 provides for a sentencing range for a Class D felony of six months to three years, with the advisory sentence being one and one half years. Ind. Code §35-50-3-2 provides that a defendant may not be sentenced to imprisonment for

¹ The trial court stated at the sentencing hearing that Spangler's sentences would be served consecutively. However, the abstract of judgment shows that the sentences are to run concurrently.

more than one year for a Class A misdemeanor. Spangler's sentence for both crimes was lawful because the sentence fell within the ranges established by statute.

Spangler contends that the sentence imposed by the trial court is inappropriate given the nature of the offense and the character of the offender. He claims that according to the Court's opinion in *McMahon v. State*, 856 N.E.2d 743 (Ind. Ct. App. 2006), that a review of the trial judge's statement of aggravating and mitigating circumstances, and the balancing process, is necessary for review under Ind. Appellate Rule 7(B). Spangler asks this Court to revise his sentence because, he alleges, the trial court's sentencing statement fails to support the sentence imposed. He alleges that the trial court failed to set forth aggravating and mitigating circumstances or an explanation of the evaluative process that led to imposition of his sentence.

This court may revise a sentence after careful review of the trial court's decision if it concludes that the sentence is inappropriate based on the nature of the offense and the character of the offender. App. R. 7(B). Sentencing decisions are left to the sound discretion of the trial court. *Fuller*, 852 N.E.2d at 26. When reviewing a sentencing statement this court is not limited to the written sentencing order but may examine the record as a whole to determine that the trial court made a sufficient statement of its reasons for selecting the sentence imposed. *Shaw v. State*, 771 N.E.2d 85, 88 (Ind. Ct. App. 2002).

In the present case, the trial judge imposed the sentence, and then explained the rationale behind the sentence after advising Spangler of his right to appeal. The trial judge did not create a checklist of aggravating and mitigating circumstances. However,

the trial judge noted for the record that Spangler's criminal history included a conviction for Class D felony criminal recklessness, and carrying a handgun without a license. Spangler had been arrested for possession of marijuana, visiting a common nuisance, theft, residential entry, battery, domestic battery, and interfering with reporting a crime. The trial judge noted that the sentences selected were nonsuspendable due to Spangler's felony conviction within three years.

During the sentencing hearing Spangler asked for probation because Spangler had not been arrested in the previous year. Further, Spangler argued that the trial court should consider Spangler's youth and that he had the support of his mother and sister. The State argued for consecutive sentences and the maximum jail time for each sentence. The State noted and Spangler admitted that he previously was on probation, but had to serve his full back-up time for a violation. In the present case Spangler entered K.A.'s locked residence at night while she was sleeping. He proceeded to punch her in the face causing swelling. When K.A. tried to escape, Spangler dragged her back into the house, and prevented her leaving.

We find that the sentence imposed is not inappropriate in this instance. One valid aggravating circumstance is sufficient to support an enhanced sentence. *Edwards v. State*, 842 N.E.2d 849, 855 (Ind. Ct. App. 2006). While Spangler did agree to plead guilty, in exchange for the plea, the State dismissed three counts against Spangler in the instant matter and the charges against Spangler alleged under another cause number. A defendant's youth is not per se a mitigating circumstance. *See Fuller*, 852 N.E.2d at 26. An allegation that the trial court failed to identify or find a mitigating factor requires the

defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Gray v. State*, 790 N.E.2d 174, 177 (Ind. Ct. App. 2003). Additionally, trial courts are not required to include within the record a statement that it considered all offered mitigating circumstances, only those that it considered significant. *Id.* The record reveals that the trial judge did not abuse her discretion by not finding those mitigating circumstances.

CONCLUSION

Spangler's sentence is appropriate given the nature of the offense and the character of the offender. The trial judge imposed a lawful sentence and did not abuse her discretion.

Affirmed.

DARDEN, J., and NAJAM, J., concur.